IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 64 of 2006

Decided on : July 3, 2006

Sumati Parkash **…..Appellant.**

VERSUS

Roshan Lal and others **…..Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Mr. K.D. Sood, Advocate.

For the Respondents : Mr. R.K. Sharma, Advocate, for respondents No.1 to 3 and none for other respondents.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Appellant-plaintiff filed a suit for permanent prohibitory injunction restraining the respondents-defendants from raising construction of building adjacent to their shops, which they allegedly completed in the year 1970. It was alleged that the plaintiffs had constructed some shops on their own land in the year 1970 and that some ventilators had been kept towards the adjoining property of the respondents-defendants. It was alleged that respondents-defendants had started erecting pillars, with a view to raising a structure and that in case the structure was allowed to be raised that would affect the right of light and air to the shops of the plaintiffs, besides affecting the

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

customary right to go to the adjoining land of the respondents-defendants for the purpose of repair of that side of the shops which is towards the property of the respondents-defendants. It was also alleged that the respondents-defendants were trying to make encroachment upon the site of the plaintiffs, which they had left vacant towards the defendants' property, by erecting pillars/structure.

3. Respondents-defendants contested the suit. They denied that any site had been left vacant by the plaintiffs towards their property. It was also denied that the shops had been constructed by the plaintiffs in the year 1970. Instead it was stated that the plan for the construction of the shops was approved in the year 1973 and the construction was started and completed much later and in any case within less than 20 years from the date of the institution of the suit. The alleged customary right was also denied.

4. Two Courts below have returned concurrent finding that the shops of the plaintiffs were not constructed in the year 1970, as claimed by the plaintiffs, but within 20 years from the institution of the suit and, hence, plaintiffs had not acquired any easementary right of air and light to their shops from the adjoining property (vacant site) of the defendants. Plea of customary right has also been dismissed. Finding has been returned that the plaintiffs had utilized every inch of their land by constructing their shops and hence the question of any encroachment upon their property by the defendants does not arise. With the aforesaid findings the claim of the plaintiffs has been dismissed.

5. Learned counsel, representing the appellant, has stated that the two Courts below have not appreciated the evidence as regards the period that elapsed between the completion of the construction of the shops and the institution of the suit and that as a matter of fact a period of more than 20 years had elapsed since the construction of the shops, when the suit was instituted and, therefore, the two Courts below were not right in rejecting the plea of acquisition of easementary right by prescription. The plea cannot be accepted for the simple reason that the plaintiffs took a definite stand, not only in the pleadings, but also during the course of the trial, that the construction of their shops stood completed in the year 1970. The plea cannot be stated to be true, for the simple reason that the plan for the construction of the shops, in question, was approved by the Municipal Committee in the year 1973 and if that is so the question of the shops having been constructed in the year 1970 does not arise. Respondents-defendants pleaded and led evidence in support of their plea that the shops were constructed after the year 1974. The suit was filed in the year 1994 or say within 20 years of the completion of the construction of shops. Thus, no fault can be found with the finding of the two Courts below that the plea of acquisition of easementary rights, as raised by the plaintiffs, is not proved.

6. It is further submitted by the learned counsel, representing the appellant-plaintiff, that the plaintiffs had a customary right to go to the adjoining property of the respondents-defendants for the repair of their shops. No evidence with respect to this alleged customary right is there. Thus, this point has also no merit.

7. No other point has been urged.

8. From the above discussion, it is clear that no substantial question of law arises. Hence, the appeal is dismissed.

(Surjit Singh)
Judge.

July 3, 2006(sd)